IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.Rev.Pet.No. 1096 of 2005()

CRA.195/2001 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
CC.348/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, KANJIRAPPALLY

.....

REVN. PETITIONER: APPELLANT/ACCUSED

VALSAMMA, W/O. JOSEPH,
MANJACKAL VEEDU, MOOLEPLAVU BHAGOM,
CHERUVALLY VILLAGE.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: RESPONDENT/COMPLAINANT

---

1. SATHEESH KUMAR, SANTHIBHAVAN VEEDU,
MOOLEPLAVU BHAGOM, CHERUVALLY KARA,
CHERUVALLY VILLAGE (DIED)

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

3. SOBHANA W/O. SATHEESH KUMAR,
SANTHIBHAVANAM, NENGATHANAM P.O.,
PALAPRA, PARATHODU

4. RESHA (MINOR) S/O. SOBHANA,
SANTHIBHAVANAM, NENGATHANAM P.O.,
PALAPRA, PARATHODU.

5. ARISA (MINOR) S/O. SOBHANA,
SANTHIBHAVANAM, NENGATHANAM P.O., PALAPRA,
PARATHODU
(THE MINOR RESPONDENTS 4 AND 5 ARE REPRESENTED
BY THEIR GUARDIAN THE 3RD RESPONDENT)

BY ADV. SRI.LIJI.J.VADAKEDOM
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1096 OF 2005 B

Dated this the 31st day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.348/1997 on the file of the J.F.C.M.-II, Kanjirappally challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to respondents 3 to 5, who are the legal heirs of the deceased complainant, by way of compensation under section 357(3) Cr.P.C. a sum of Rs.15,000/- (Rupees fifteen thousand only)(giving credit to the deposit of Rs.15,000/- made pursuant to the orders of this court) within two months from today, then she need to undergo only imprisonment till the rising of the court, failing which the revision petitioner shall undergo simple

imprisonment for three months by way of default sentence. Respondents 3 to 5 shall be entitled to withdraw the sum of Rs.15,000/-(Rupees fifteen thousand only) lying in deposit. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks